214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:120459-DB

CEA-76-2014 (O&M)
Date of Decision: 10.09.2024

M/s New Allenberry Works ...Appellant

Vs.

Commissioner of Central Excise, Faridabad ...Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Aman Garg, Advocate for the appellant.

Mr. Anshuman Chopra, Sr. Standing Counsel with
Mr. Deepesh Kakkar, Advocate for the respondent.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The assessee is in appeal assailing the order dated 28.04.2014, passed by the Customs, Excise and Service Tax Appellate Tribunal, whereby the appeal filed by the assessee has been partially dismissed.

2. Learned counsel for the appellant submits that the respondent has clearly fallen in error in denying the Cenvat credit availed of by the appellant for the rent of building taken by the appellant for the purposes of its job workers, who were required to manufacture on the basis of machines which were provided by the appellant and the raw material was also being provided by the appellant. Learned counsel for the appellant submits that the authorities below failed to take notice that the agreement between the

appellant and the job workers is completely different from the claim of Cenvat credit for the rent paid for the premises as taxable service under the category of renting out immovable property services.

Learned counsel has taken this Court to the orders passed by the Assessing Officer, Commissioner Central Excise (Appeals) as well as CESTAT, to submit that none of the authorities dealt with the argument advanced by the appellant relating to the adaptation of taxable service under the category of renting out immovable property services.

3. Per contra, learned counsel appearing for the respondent submits that there was an agreement entered into between the appellant and the job workers which clearly mentions that the work of the job workers would be completely independent to that of the manufacturer and therefore, if they have been working in the premises which have been taken on rent by the appellant, the benefit of said rent advanced by the appellant would not be accruable to him for the purpose Cenvat credit.

4. We have considered the submissions.

5. The definition of taxable service under the category of renting out of immovable property services is as under:-

> *"(105) "taxable service" means any [service provided or to be provided]*
>
> *(a) [to any person], by a stock-broker in connection with the sale or purchase of securities listed on a recognized stock exchange;*
>
> *(b) (Omitted)*
>
> *(c) (Omitted)*

(d) to a [policy holder or any person], by an [insurer, including re-insurer] carrying on general insurance business in relation to general insurance businesses;

Explanation – 1 :

For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means:-

(i) Where there is more than one class of travel, the class attracting the lowest standard fare; or

(ii) Where there is only one class of travel that class.

Explanation – 2:

For the purposes of this sub-clause, in an aircraft meant for nonscheduled air transport of passengers, no class of travel shall be treated as economy class;

(zzzp) to any person, by any other person, in relation to transport of goods by rail, in any manner;

(zzzq) to any person, by any other person, in relation to support services of business or commerce, in any manner;

(zzzr) to any person, by any other person, in relation to auction of property, movable or immovable, tangible or intangible, in any manner, but does not include auction of property under the directions or orders of a Court of law or auction by the Government.

Explanation:- For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "auction by the Government" means the Government property being auctioned by any person acting as auctioneer;

(zzzs) to any person, by any other person, in relation to managing the public relations of such person, in any manner;

(zzzt) to any person, under a contract or an agreement, by any other person, in relation to ship management service;

(zzzu) to any person, by any other person, in relation to [internet telecommunication service;]

(zzzv) to any person, by any other person, in relation to transport of such person embarking from any port or other port in India, by a cruise ship.

Explanation: - For the purposes of this sub-clause, 'cruise ship' means a ship or vessel used for providing recreational or pleasure trips, but does not include a ship or vessel used for private purposes or a ship or vessel of, or less than, fifteen net tonnage;

(zzzw) to any person, by any other person, in relation to credit card, debit card, charge card or other payment card service, in any manner;

(zzzx) to any person, by the telegraph authority in relation to the telecommunication service;

(zzzy) to any person, by any other person in relation to mining of minerals, oil or gas;

(zzzz) to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of business or commerce."

6. Thus, if a manufacturer takes any immovable property on rent, the benefit of such rent for Cenvat credit can be only availed when the said services provided or to be provided in the rented premises, are in relation to the renting of the immovable property and secondly, the rented immovable property should be used for the furtherance of business or commerce.

7. The definition of input service as provided in Rule 2 (L) reads as under:-

"Input service" means any service:-

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and (clearance of final products upto the place of removal).

8. It is an admitted position that the manufacturer-appellant had shifted his machinery to the rented premises. The raw material was also provided by the appellant. The contract was entered into between the appellant and the job workers to perform the job of manufacturing additionally at the rented premises and handover the final product to the appellant. The premises were thus made available to the job workers for the purpose of performing their work and therefore, the necessary ingredients as required for taxable service would be fulfilled namely that the service has been provided by the job workers in the rented immovable property and secondly the rented immovable property was being utilized for the furtherance of business or commerce by the manufacturer – appellant.

9. We find that none of the authorities below examined this aspect while deciding the case and both the appellate authorities proceeded on examining the case in light of the definition of job workers. We find that a perversity has crept in the order as the claim of Cenvat credit is not for the job workers and payment made was for the rent paid for the premises. In the circumstances, we do not find the orders impugned to be sustainable in the eyes of law and the same are accordingly set aside.

10. We accordingly allow this appeal and set aside the order dated 28.04.2014, passed by the Customs, Excise and Service Tax Appellate Tribunal and hold the appellant entitled for the benefit of Cenvat credit as

claimed. However, the rest part of the order passed by the CESTAT shall remain intact and shall be applicable without any change.

11. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

10.09.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No